

By: Donald L. Paillette, Project Director Subcommittee: No. 1

Date: February 24, 1968

Action: \_\_\_\_\_

Date: \_\_\_\_\_

Proposed Code Revision

Subject: Larceny (Article 14)

History and Background of Present Law:

ORS 164.310 is the basic larceny statute, but it is merely one of numerous statutes relating to the stealing of property. (See Exhibit "A" attached.)

Our present statutes contain three general types of provisions proscribing the criminal taking of property and draw technical distinctions between the traditionally separate crimes of larceny, embezzlement and obtaining property by false pretense. In addition many of the existing statutes found in ORS Chapter 164 (as shown by Exhibit "A") describe specific criminal acts that are covered by the basic larceny section but are distinguished from it by the subject matter of the theft or its locus. These other statutes cover separately, and often prescribe different penalties for, the crimes of stealing from the person, stealing minerals, trees or plants, live-stock, railroad property, animals and motor vehicles, to mention a few.

It is apparent that this multiplicity of statutory provisions with its confusing diversity of penalties for similar crimes, gradually developed over the years as the result of piecemeal legislation.

The embezzlement laws themselves are further refined into a perplexing series of distinct statutory crimes, each with its own special penalty provision. Often, the vastly different penalties between one type of embezzlement and another appear to rest on no logical or reasonable foundation. (See Exhibit "B".)

Fraudulent criminal conduct which results in the defendant obtaining property from the victim is dealt with as separate crimes in ORS Chapter 165. (See Exhibit "C" attached.)

A substantial body of case law exists in which the Oregon Supreme Court has grappled with the distressing problems created by our archaic theft statutes and related provisions. (See "Comment".)

The structure of the Oregon statutes, inherited as it was from the old common law, retains today distinctions that are not only meaningless in a modern society, but are, also, unnecessary handicaps to effective administration of the laws.

History and Background of Present Law:

EXHIBIT "A"

<u>ORS</u>	<u>Crime</u>	<u>Penalty</u>
164.310(1) (a)	Larceny (over \$75)	10 year maximum
164.310(1) (b)	Larceny (under \$75)	1 yr + \$500 or both maximum
164.320	Larceny in building	7 year maximum
164.330	Entering motor vehicle with intent to steal	5 yr + \$1000 or both maximum
164.340	Larceny from person	5 year maximum
164.350	Larceny of crops or grain	10 year maximum
164.360	Larceny of fixture, ore, tree, plant	10 year maximum
164.370	Larceny of skin/carcass of livestock	10 year maximum
164.380	Larceny of livestock	10 year maximum
164.390	Shoplifting	7 year maximum
164.420	Injury to or larceny of trees, minerals	1 yr or \$1000 maximum
164.540	Stealing train ride	30 day + \$60 maximum
164.560	Larceny of railroad property	3 yr or \$1000 maximum
164.610	Interference with water rights	6 mos + \$500 maximum
164.620	Interference with gas and electric appliances	2 yr + \$500 maximum
164.630	Interference with telegraph equipment	6 mos + \$500 maximum
164.635	Interference with coin telephone	1 yr + \$500 maximum
164.670	Taking or using vehicle without consent	2 yr or \$500 maximum
164.730	Taking or using animal w/o consent	2 yr + \$500 maximum
164.850	Robbing mining claim	5 yrs + \$1000 maximum
164.890	Removing records or documents	6 mos + \$250 maximum
165.045	Receiving/concealing stolen property	5 year maximum

History and Background of Present Law:

EXHIBIT "B"

<u>ORS</u>	<u>Crime</u>	<u>Penalty</u>
165.005	Embezzlement by fiduciary	10 year maximum
165.010	Embezzlement by bailee	10 year maximum
165.012	Failure to return rented property	6 mos or \$200 maximum
165.015	Conversion of public funds	15 year maximum
165.025	Conversion by trustee	1 yr + \$1000 maximum
165.030	Conversion by agent, attorney, etc.	5 yr or \$1000 maximum
165.035	Embezzlement by banker	10 yr + \$5000 maximum
165.040	Embezzlement savings and loan funds	10 year maximum
162.630	Failure to pay over public funds	20 yr + \$50,000 max.
162.640	Profiting from public funds	20 yr + \$50,000 max.
162.650	Unlawful use of funds by State Treasurer	2 yr + \$5000 maximum
162.660	Multnomah County Treasurer profiting from public funds	2 yr + \$5000 maximum
162.680	Unlawful use of funds by Port Commissioner	20 yr + \$50,000 max.
162.690	Unlawful use of funds by school clerk	20 yr + \$50,000 max.
517.450	Embezzlement of minerals by bailee	1 yr + \$500 maximum

History and Background of Present Law:EXHIBIT "C"

<u>ORS</u>	<u>Crime</u>	<u>Penalty</u>
165.205	OMPPFP	5 year maximum
165.210	Common law fraud	3 year maximum
165.215	Obtaining by personation	10 year maximum
165.220	Falsely representing ownership in land	2 year maximum
165.225	NSF check	5 year maximum
165.230	Defrauding innkeeper	50 days + \$100 maximum
165.235	Issuing false invoice	3 year maximum
165.240	Falsely pretending heirship	10 year maximum
165.250	Falsifying corporation records	1 year maximum
165.270	Taxicab fraud	10 days + \$25 maximum
165.280	Toll bridge fraud	\$20 maximum
165.295	Theft or use of credit card	5 year maximum
165.300	Using revoked credit card	5 year maximum
165.340	Falsely pretending membership	1 year + \$500 maximum
165.405	Altering animal brands	5 year maximum
165.410	Unlawful sale/possession of hides	90 days + \$100 maximum
165.415	Misrepresenting of pedigree	1 year + \$500 maximum
165.420	Abandonment of animals by bailees	3 year maximum
165.425	Conversion of animals by bailees	10 year maximum
165.430	Conversion of animals	3 year maximum
165.435	Buying animal w/o consent of owner	3 year maximum
165.445	Defrauding stablekeeper	20 days + \$50 maximum
165.450	Adulterating gold dust	5 year maximum

History and Background of Present Law:

EXHIBIT "C" (Cont'd)

<u>ORS</u>	<u>Crime</u>	<u>Penalty</u>
165.455	Possessing adulterated gold dust	5 year maximum
165.460	Selling adulterated gold dust	5 year maximum
165.465	Misrepresenting metallic commodity	\$500 maximum
165.615	Making false financial statement	1 year + \$1000 maximum
165.620	Benefitting from false financial statement	1 year + \$1000 maximum
165.625	Making false financial statement re company	5 year maximum
165.655	Issuing false warehouse receipt	5 year maximum
165.660	Issuing false warehouse statement	1 year + \$1000 maximum
165.665	Issuing false duplicate receipt	5 year maximum
165.670	Issuing false warehouse receipt	1 yr + \$1000 maximum
165.675	Delivering goods without obtaining receipt	1 yr + \$1000 maximum
165.680	Fraudulently depositing goods	1 yr + \$1000 maximum

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Comment on Proposed Revision:

Subdivision (1) defines the offense of "larceny." This term, rather than "theft" as is employed in the Model Penal Code, is used because it is the term that traditionally has been used in Oregon to denote stealing. The scope of the crime is greatly broadened, however, to eliminate the technical distinctions between larceny, embezzlement and obtaining by false pretenses.

Subdivision (2) contains a list of the different forms of larceny. Paragraph (a) designates as larceny the type of conduct heretofore known as common law larceny, embezzlement or obtaining. Paragraph (b) makes it larcenous for one having control over property to purposefully fail to take steps to restore it to the owner.

Paragraph (c) of subdivision (2) represents a further enlargement of the traditional concept of larceny by including the acquisition of property through issuance of a bad check.

Paragraph (d) of subdivision (2) continues the expanded concept of larceny by bringing extortion within it. Of course, this would constitute an aggravated form of larceny and should be treated accordingly in the penalty provisions.

Paragraph (c) covers acquisition of property through fraudulent promises made without any intention of performance. This includes false promises that do not amount to misrepresentation of "fact."

The section on value of the stolen property establishes three criteria to be used for establishing value.

The proposed draft creates three degrees of grand larceny, graded according to the value of the property stolen or other pertinent aspects of the offenses, and petty larceny. No attempt has been made to designate the class of crime that each would be, inasmuch as this would need to conform to the general classification of crimes yet to be adopted by the Commission.

Receiving stolen property is consolidated with other theftuous offenses and is consistent with the comprehensive definition of larceny which includes the wrongful withholding of another's property with larcenous intent.

The section relating to issuing a bad check defines the terms that are employed and sets forth the elements of the crime. The offense would be committed without any obtaining of property; however, the acquisition of property through commission of the crime of issuing a bad check would fall within the definition and concept of larceny.

The section on "larceny of services" is taken directly from the Model Penal Code to cover specifically conduct that would not otherwise amount to larceny because services are not "property."

Comment on Proposed Revision:

In its present form the draft closely parallels the New York Penal Law or the Model Penal Code. Some of the modifications to the New York code that have been suggested by the Connecticut Commission have been incorporated into it.

All of the recommendations of the Oregon Legislative Interim Committee on Criminal Law have been adopted, although the proposed draft goes considerably further in broadening the scope of larceny than did the statute that was proposed by that committee.

The proposed revision in its present form does not include a section relating to defenses to prosecution for larceny nor to conduct that sounds of larceny, such as "taking and using" property without the consent of the owner, but does not reach the stature of larceny because it does not necessarily entail an intent to "deprive" or "appropriate" the property involved. It is submitted that such provisions would be desirable.

Oregon Cases:

Larceny

Fundamental elements of common law larceny, preserved by statute are (1) trespassory (2) taking and (3) carrying away of the (4) personal property (5) of another (6) with intent to steal. State v. Tauscher, 227 Or 1 (1961).

Statute defining the crime of larceny was designed to cover only those cases which would have been larceny at common law. State v. Dooley, 102 Or 563 (1922).

Larceny consists of taking the personal property of another, without the owner's consent, coupled with the intent wholly to deprive the owner thereof; such intents must exist concurrently and contemporaneously. State v. Teller, 45 Or 571 (1904).

One who obtained money by pretense of making a bet, the owner not intending to part with title, was guilty of larceny. State v. Ryan, 47 Or 338 (1905).

One who received a payment of money in excess of what he was entitled to receive and appropriated the money to his own use, with intent to defraud the owner thereof, was guilty of larceny. State v. Ducher, 8 Or 394 (1880).

A taking of animals with intent to convert them to the taker's use was not presumed to have been felonious, where defendant set up a claim at the time that the animals were lost or abandoned property. State v. Swayze, 11 Or 357 (1884).

Comment on Proposed Revision:

Oregon Cases (Cont'd)

Larceny (Cont'd)

Defendant was guilty of larceny by trick when he executed a worthless check as down payment on a new car and executed a conditional sales contract for the balance, and received possession of auto because the vendor had retained legal title to the car for security.

State v. Thompson, 240 Or 468 (1965).

Embezzlement

Larceny involves the idea of unlawful acquisition, whereas embezzlement is fraudulent conversion of property, possession of which was lawfully acquired.

State v. Coleman, 119 Or 430 (1926).

Only property which is tangible and capable of being possessed may be subject of larceny or embezzlement. An agent who, without authority and for her own purposes, drew a check on principal's account was not guilty of embezzlement.

State v. Tauscher, 227 Or 1 (1961).

Embezzlement is solely a creature of statute, but has fairly well-established meaning describing fraudulent appropriation of property the possession of which has been entrusted to defendant.  
Id.

The crime of larceny by bailee is a separate and distinct offence from the crime of larceny.

State v. Dooley, 102 Or 563 (1922).

The crime of embezzlement is statutory.

State v. Dormitzer, 123 Or 165 (1927).

Larceny requires unlawful appropriation and intent to permanently deprive owner of property, while "embezzlement" is fraudulent conversion of property lawfully in defendant's possession.

State v. Johnston, 143 Or 395 (1933).

False Pretenses

Defendant must be shown to have had intent to defraud in order to sustain conviction under either ORS 165.205 or 165.225.

State v. Scott, 237 Or 390 (1964).



Comment on Proposed Revision:

Oregon Cases (Cont'd)

False Pretenses (Cont'd)

False pretense statute and NSF check statute define mutually exclusive crimes, and first statute applies where no debtor - creditor relationship exists between defendant and drawee bank, and latter statute applies only where defendant has, before presenting check, established account in the bank on which check is drawn.  
Broom v. Gladden, 231 Or 502 (1962).

A test for distinguishing between larceny and OPFP is to determine whether defendant could convey good title to another by sale and delivery of the property.  
State v. Thompson, 240 Or 468 (1965).

False pretenses statute is violated only if the victim parts with ownership of his property as the result of the false pretense, while larceny is committed if possession only, and not title to the property, is acquired by false pretense.  
Lilly v. Gladden, 220 Or 84 (1960).

A false pretense is a fraudulent representation of an existing or past fact by one who knows it not to be true and is adapted to induce the person to whom it is made to part with something of value.  
State v. Hammelsy, 52 Or 156 (1908).

ORS 136.560 requires that the false pretenses prohibited by ORS 165.205, if made orally, be accompanied by a false token or writing; and if not so accompanied the false pretense, or some note or memorandum thereof, must be in writing, signed by or in the handwriting of the defendant.  
State v. Whiteaker, 64 Or 297 (1913).

A false pretense is a misrepresentation of an existing or past fact, and not a mere promise to do something in the future or a misrepresentation as to something to take place in the future.  
State v. Leonard, 73 Or 451 (1914).

Where possession of personal property is obtained from the owner by fraud, trick or device and the owner intends to part with both possession and title, the offense is obtaining property by false pretense.  
Beckwith v. Galice Mines Co., 50 Or 542 (1908).

Comparison of Model Penal Code, New York Penal Law and Illinois Criminal Code:

The New York proposal and the Illinois code contain more extensive and complete definitions of the offenses which amount to larceny than does the MPC. The proposed draft follows the New York and Illinois approach to defining the offenses.

Another difference among the three codes is with respect to the language used in defining larceny of lost or mislaid property. The New York code uses the language "A person acquires lost property when he exercises a control over property of another . . . without taking reasonable measures to return such property to the owner." The Illinois code states that a person who obtains control over lost or mislaid property commits theft when he "fails to take reasonable measures to restore the property to the owner and intends to deprive the owner permanently of the use or benefit of the property." The MPC has in its definition the term "if with purpose to deprive the owner thereof . . . he fails to take reasonable measures to restore the property to a person entitled to have it." The proposed revision borrows from all three and uses the terminology "if with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to the owner."

A third difference that appears to exist concerns larceny by extortion. The proposed draft follows the New York Revised Penal Law in proscribing the larceny of property by threat to cause physical injury to some person in the future. The Model Penal Code makes it larceny to purposely obtain property of another by threatening to inflict bodily injury on anyone. The New York provision distinguishes more clearly between this kind of larceny and the more serious offense of robbery and appears to be the better approach. The Illinois code punishes as theft the conduct of a person who "obtains by threat control over property of the owner." The term "threat" is defined as including "a menace to inflict physical harm on the person threatened or any other person . . . "

A fourth apparent difference exists in connection with the criteria used to determine the value of stolen property. The Model Penal Code states that the amount involved in a theft "shall be deemed to be the highest value, by any reasonable standard, of the property or services which the actor stole or attempted to steal." The New York Revised Penal Law sets out three definite criteria to be employed to determine value. The Illinois code does not include a section on the manner of fixing value within its theft provisions.

Text of Proposed Revision:

PRELIMINARY DRAFT

Larceny

(1) A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

(2) Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision (1) of this section, committed in any of the following ways:

(a) By conduct heretofore known as common law larceny by trespassory taking, common law larceny by trick, embezzlement or obtaining property by false pretenses.

(b) By acquiring property lost, mislaid or delivered by mistake.

A person who comes into control of property of another that he knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits larceny if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to the owner.

(c) By committing the crime of issuing a bad check.

(d) By extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

(i) Cause physical injury to some person in the future; or

(ii) Cause damage to property; or

Text of Proposed Revision:

- (iii) Engage in other conduct constituting a crime; or
  - (iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or
  - (v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
  - (vi) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
  - (vii) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
  - (viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
  - (ix) Performs any other act which would not benefit the actor but which is calculated to harm another person's health, safety, business, calling, career, financial condition, reputation or personal relationships.
- (e) By false promise. A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or does not believe that the third person intends to engage in such conduct.

Text of Proposed Revision:

Larceny; Value of Stolen Property

For the purposes of this title, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(b) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner might reasonably suffer because of the loss of the instrument.

(3) When the value of property cannot be satisfactorily ascertained, it shall be presumed to be an amount less than one hundred dollars.

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Petty Larceny

A person commits petty larceny when he steals property.

Petty larceny is a \_\_\_\_\_.

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Text of Proposed Revision:

Grand Larceny in the Third Degree

A person commits grand larceny in the third degree when he steals property and when:

- (1) The value of the property exceeds one hundred dollars; or
- (2) The property consists of a public record, writing or instrument kept, held or deposited according to law with or in the keeping of any public office or public servant; or
- (3) The property, regardless of its nature and value, is taken from the person of another; or
- (4) The property, regardless of its nature and value, is obtained by extortion.

Grand larceny in the third degree is a \_\_\_\_\_.

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Grand Larceny in the Second Degree

A person commits grand larceny in the second degree when he steals property and when the value of the property exceeds five hundred dollars.

Grand larceny in the second degree is a \_\_\_\_\_.

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Grand Larceny in the First Degree

A person commits grand larceny in the first degree when he steals property and when:

- (1) The property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will:

Text of Proposed Revision:

Grand Larceny in the First Degree (Cont'd)

- (a) Cause physical injury to some person in the future; or
  - (b) Cause damage to property; or
  - (c) Use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such a manner as to affect some person adversely; or
- (2) The value of the property exceeds two thousand dollars.

Grand larceny in the first degree is a \_\_\_\_\_.

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Receiving Stolen Property

A person commits larceny by receiving stolen property if he receives, retains or disposes of property of another knowing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

Larceny by receiving stolen property is a \_\_\_\_\_.

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Issuing a Bad Check; Definitions

The following definitions apply to this section:

(1) "Check" means any check, draft or similar sight order for the payment of money which is not post-dated with respect to the time of utterance.

(2) "Drawer" of a check means a person whose name appears thereon as the primary obligor, whether the actual signature be that of himself or of a person purportedly authorized to draw the check in his behalf.

Text of Proposed Revision:

Issuing a Bad Check; Definitions (Cont'd)

(3) "Representative drawer" means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor.

(4) "Utter." A person "utters" a check when, as a drawer or representative drawer thereof, he delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with intent that it be so delivered is presumed to have uttered it if the delivery occurs.

(5) "Pass." A person "passes" a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and uttered by another, he delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto.

(6) "Funds" means money or credit.

(7) "Insufficient funds." A drawer has "insufficient funds" with a drawee to cover a check when he has no funds or account whatever, or funds in an amount less than that of the check; and a check dishonored for "no account" shall also be deemed to have been dishonored for "insufficient funds."

(8) "Credit." "Credit" means an arrangement or understanding with such bank or depository for the payment of such check, draft or order in full on presentation.



Text of Proposed Revision:

Issuing a Bad Check

A person commits the crime of issuing a bad check when:

(1) As a drawer or representative drawer, he utters a check knowing that he or his principal does not then have sufficient funds with the drawee to cover it; and

(a) He intends or believes at the time of utterance that payment will be refused by the drawee upon presentation; and

(b) Payment is refused by the drawee upon presentation; or

(2) He passes a check knowing that the drawer thereof does not then have sufficient funds with the drawee to cover it; and

(a) He intends or believes at the time the check is passed that payment will be refused by the drawee upon presentation; and

(b) Payment is refused by the drawee upon presentation.

Issuing a bad check is a \_\_\_\_\_.

For the purposes of this section, as well as for the purposes of prosecution for larceny by issuing a bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid if:

(a) The issuer had no account with the drawee at the time the check or order was issued; or

(b) Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue and the issuer failed to make good within 10 days after receiving notice of that refusal.

Text of Proposed Revision:

Larceny of Services

(1) A person commits larceny if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. "Services" includes labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay raises a presumption that the service was obtained by deception as to intention to pay.

2. A person commits larceny if, having control over the disposition of services to others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

Larceny of services is a \_\_\_\_\_.

Text of MPC:

ARTICLE 223. THEFT AND RELATED OFFENSES

Section 223.1. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally.

(1) Consolidation of Theft Offenses. Conduct denominated theft in this Article constitutes a single offense, ~~embracing the separate offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like.~~ An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Article, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the Court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

(2) Grading of Theft Offenses.

(a) Theft constitutes a felony of the third degree if the amount involved exceeds \$500, or if the property stolen is a firearm, <sup>airplane, motorcycle, motorboat</sup> automobile, or other motor-propelled vehicle, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

(b) Theft not within the preceding paragraph constitutes a misdemeanor, except that if the property was not taken from the person or by threat, or in breach of a fiduciary obligation, and the actor proves by a preponderance of the evidence that the amount involved was less than \$50, the offense constitutes a petty misdemeanor.

(c) The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services which the actor stole or attempted to steal. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

(3) Claim of Right. It is an affirmative defense to prosecution for theft that the actor:

(a) was unaware that the property or service was that of another; or

(b) acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(c) took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

Text of MPC:

Section 223.1 (Cont'd)

(4) Theft from Spouse. It is no defense that theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

Section 223.2. Theft by Unlawful Taking or Disposition.

(1) Movable Property. A person is guilty of theft if he <sup>unlawfully</sup> takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

(2) Immovable Property. A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with purpose to benefit himself or another not entitled thereto.

Section 223.3. Theft by Deception.

A person is guilty of theft if he <sup>purposely</sup> obtains property of another by deception. A person deceives if he purposely:

(a) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(b) prevents another from acquiring information which would affect his judgment of a transaction; or

(c) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(d) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.

Text of MPC:

Section 223.4. Theft by Extortion.

A person is guilty of theft if he <sup>purposely</sup> obtains property of another by threatening to:

- (a) inflict bodily injury on anyone or commit any other criminal offense; or
- (b) accuse anyone of a criminal offense; or
- (c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
- (d) take or withhold action as an official, or cause an official to take or withhold action; or
- (e) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (g) inflict any other harm which would not benefit the actor.

It is an affirmative defense to prosecution based on paragraphs (b), (c) or (d) that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

Section 223.5. Theft of Property Lost, Mislaid, or Delivered by Mistake.

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with purpose to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

Text of MPC:

Section 223.6. Receiving Stolen Property.

(1) Receiving. A person is guilty of theft if he <sup>purposefully</sup> receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

(2) Presumption of Knowledge. The requisite knowledge or belief is presumed in the case of a dealer who:

(a) is found in possession or control of property stolen from two or more persons on separate occasions; or

(b) has received stolen property in another transaction within the year preceding the transaction charged; or

(c) being a dealer in property of the sort received, acquires it for a consideration which he knows is far below its reasonable value.

"Dealer" means a person in the business of buying or selling goods. (Including pawn brokers.)

Section 223.7. Theft of Services.

(1) A person is guilty of theft if he <sup>purposefully</sup> obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. "Services" includes labor, professional service, <sup>transportation</sup> telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he <sup>knowingly</sup> diverts such services to his own benefit or to the benefit of another not entitled thereto.

Section 223.8. Theft by Failure to Make Required Disposition of Funds Received.

A person who <sup>purposefully</sup> obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property, in

*to be reserved*

Text of MPC:

Section 223.8 (Cont'd)

equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition. An officer or employee of the government or of a financial institution is presumed: (i) to know any legal obligation relevant to his criminal liability under this Section, and (ii) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

Section 223.9. Unauthorized Use of Automobiles and Other Vehicles.

A person commits a misdemeanor if he operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is an affirmative defense to prosecution under this Section that the actor reasonably believed that the owner would have consented to the operation had he known of it.

Text of Revisions of Other States:

NEW YORK REVISED PENAL LAW (1967)

Article 155

Section 155.05 Larceny; defined

1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

2. Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:

(a) By conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses;

(b) By acquiring lost property.

A person acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner;

(c) By committing the crime of issuing a bad check, as defined in section 190.05;

(d) By false promise.

A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed;



Text of Revision of Other States:

New York Revised Penal Law (1967) (Cont'd)

Section 155.05 (Cont'd)

(e) By extortion.

A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

- (i) Cause physical injury to some person in the future; or
- (ii) Cause damage to property; or
- (iii) Engage in other conduct constituting a crime; or
- (iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or
- (v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (vi) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (vii) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Text of Revision of Other States:

New York Revised Penal Law (1967) (Cont'd)

Section 155.10 Larceny; no defense

The crimes of (a) larceny committed by means of extortion and an attempt to commit the same, and (b) bribe receiving by a labor official as defined in section 180.20, and bribe receiving as defined in section 200.05, are not mutually exclusive, and it is no defense to a prosecution for larceny committed by means of extortion or for an attempt to commit the same that, by reason of the same conduct, the defendant also committed one of such specified crimes of bribe receiving.

Section 155.15 Larceny; defenses

1. In any prosecution for larceny committed by trespassory taking or embezzlement, it is an affirmative defense that the property was appropriated under a claim of right made in good faith.

2. In any prosecution for larceny by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

Section 155.20 Larceny; value of stolen property

For the purposes of this title, the value of property shall be ascertained as follows:

1. Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

2. Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectable thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

Text of Revision of Other States:

New York Revised Penal Law (1967) (Cont'd)

Section 155.20 (Cont'd)

(b) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

3. When the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in subdivisions one and two of this section, its value shall be deemed to be an amount less than two hundred fifty dollars.

Section 155.25 Petit larceny

A person is guilty of petit larceny when he steals property.

Petit larceny is a class A misdemeanor.

Section 155.30 Grand larceny in the third degree

A person is guilty of grand larceny in the third degree when he steals property and when:

1. The value of the property exceeds two hundred fifty dollars;  
or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of secret scientific material; or
4. The property, regardless of its nature and value, is taken from the person of another; or
5. The property, regardless of its nature and value, is obtained by extortion.

Grand larceny in the third degree is a class E felony.

Text of Revision of Other States:

New York Revised Penal Law (1967) (Cont'd)

Section 155.35 Grand larceny in the second degree

A person is guilty of grand larceny in the second degree when he steals property and when the value of the property exceeds one thousand five hundred dollars.

Grand larceny in the second degree is a class D felony.

Section 155.40 Grand larceny in the first degree

A person is guilty of grand larceny in the first degree when he steals property and when the property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, or (b) cause damage to property, or (c) use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Grand larceny in the first degree is a class C felony.

Section 155.45 Larceny; pleading and proof

1. Where it is an element of the crime charged that property was taken from the person or obtained by extortion, an indictment for larceny must so specify. In all other cases, an indictment, information or complaint for larceny is sufficient if it alleges that the defendant stole property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which such property was stolen or the particular theory of larceny involved.

2. Proof that the defendant engaged in any conduct constituting larceny as defined in section 155.05 is sufficient to support any indictment, information or complaint for larceny other than one charging larceny by extortion. An indictment charging larceny by extortion must be supported by proof establishing larceny by extortion.

Text of Revision of Other States:

ILLINOIS CRIMINAL CODE OF 1961

PART C. OFFENSES DIRECTED AGAINST PROPERTY

Article 16. Theft and Related Offenses

Section 16-1. Theft

A person commits theft when he knowingly:

- (a) Obtains or exerts unauthorized control over property of the owner; or
- (b) Obtains by deception control over property of the owner; or
- (c) Obtains control over stolen property knowing the property to have been stolen by another, and
  - (1) Intends to deprive the owner permanently of the use or benefit of the property; or
  - (2) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or
  - (3) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

Penalty.

A person first convicted of theft of property not from the person and not exceeding \$150 in value shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both. A person convicted of such theft a second or subsequent time, or after a prior conviction of any type of theft, shall be imprisoned in the penitentiary from one to 5 years. A person convicted of theft of property from the person or exceeding \$150 in value shall be imprisoned in the penitentiary from one to 10 years.

Section 16-2. Theft of Lost or Mislaid Property

A person who obtains control over lost or mislaid property commits theft when he:

- (a) Knows or learns the identity of the owner or knows, or is aware of, or learns of a reasonable method of identifying the owner, and
- (b) Fails to take reasonable measures to restore the property to the owner, and

Text of Revisions of Other States:

Illinois Criminal Code of 1961 (Cont'd)

Section 16-2 (Cont'd)

(c) Intends to deprive the owner permanently of the use or benefit of the property.

Penalty.

A person convicted of theft of lost or mislaid property shall be fined not to exceed \$500 or double the value of such property, whichever is greater.

Section 16-3. Theft of Labor or Services or Use of Property

(a) A person commits theft when he obtains the temporary use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services.

(b) Penalty.

A person convicted of theft or labor or services or use of property shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both,

Section 16-4. Offender's Interest in the Property

(a) It is no defense to a charge of theft of property that the offender has an interest therein, when the owner also has an interest to which the offender is not entitled.

(b) Where the property involved is that of the offender's spouse, no prosecution for theft may be maintained unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft.

Text of MPC:

ARTICLE 223. THEFT AND RELATED OFFENSES

Section 223.0. Definitions

In this Article, unless a different meaning plainly is required:

(1) "deprive" means: (a) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or (b) to dispose of the property so as to make it unlikely that the owner will recover it.

(2) "financial institution" means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(3) "government" means the United States, any State, county, municipality, or other political unit, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government.

(4) "movable property" means property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location. "Immovable property" is all other property.

(5) "obtain" means: (a) in relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or (b) in relation to labor or service, to secure performance thereof.

(6) "property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power.

(7) "property of another" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

Text of Revisions of Other States:

NEW YORK REVISED PENAL LAW (1967)

Article 155

Section 155. Larceny

The following definitions are applicable to this title:

1. "Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or any article, substance or thing of value.

2. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

3. "Deprive." To "deprive" another of property means (a) to withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him, or (b) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

4. "Appropriate." To "appropriate" property of another to oneself or a third person means (a) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit, or (b) to dispose of the property for the benefit of oneself or a third person.

5. "Owner." When property is taken, obtained or withheld by one person from another person, an "owner" thereof means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds it from him by larcenous means.

A joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof.

In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.



Text of Revision of Other States:

New York Revised Penal Law (1967) (Cont'd)

Section 155 (Cont'd)

6. "Secret scientific material" means a sample, culture, microorganism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any part or phase thereof, and which is not, and is not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or their consent, and when it accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.

Text of Revisions of Other States:

ILLINOIS CRIMINAL CODE OF 1961

PART C. OFFENSES DIRECTED AGAINST PROPERTY

Article 15. Definitions

Section 15-1. Property

As used in this Part C, "property" means anything of value. Property includes real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or otherwise of value to the owner; things growing on, affixed to, or found on land, or part of or affixed to any building; electricity, gas and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink.

Section 15-2. Owner

As used in this Part C, "owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

Section 15-3. Permanent Deprivation

As used in this Part C, to "permanently deprive" means to:

- (a) Defeat all recovery of the property by the owner; or
- (b) Deprive the owner permanently of the beneficial use of the property; or
- (c) Retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or
- (d) Sell, give, pledge, or otherwise transfer any interest in the property or subject it to the claim of a person other than the owner.

Section 15-4. Deception

As used in this Part C, "deception" means knowingly to:

- (a) Create or confirm another's impression which is false and which the offender does not believe to be true; or
- (b) Fail to correct a false impression which the offender previously has created or confirmed; or

Text of Revisions of Other States:

Illinois Criminal Code of 1961 (Cont'd)

Article 15, Section 15-4 (Cont'd)

(c) Prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) Sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

Section 15-5. Threat

As used in this Part C, "threat" means a menace, however communicated, to:

(a) Inflict physical harm on the person threatened or any other person or on property; or

(b) Subject any person to physical confinement or restraint; or

(c) Commit any criminal offense; or

(d) Accuse any person of a criminal offense; or

(e) Expose any person to hatred, contempt or ridicule; or

(f) Harm the credit or business repute of any person; or

(g) Reveal any information sought to be concealed by the person threatened; or

(h) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(i) Bring about or continue a strike, boycott or other similar collective action if the property is not demanded or received for the benefit of the group which he purports to represent; or

(j) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(k) Inflict any other harm which would not benefit the offender.

Text of Revisions of Other States:

Illinois Criminal Code of 1961 (Cont'd)

Article 15 (Cont'd)

Section 15-6. Stolen Property

As used in this Part C, "stolen property" means property over which control has been obtained by theft.

Section 15-7. Obtain

As used in this Part C, "obtain" means:

(a) In relation to property, to bring about a transfer of interest or possession, whether to the offender or to another, and

(b) In relation to labor or services, to secure the performance thereof.

Section 15-8. Obtains Control

As used in this Part C, the phrase "obtains or exerts control" over property, includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.